

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of ) **MAIL STOP**  
Takao Koyama ) **APPEAL BRIEF - PATENTS**  
Application No.: 10/511,304 ) Group Art Unit: 3751  
Filed: October 15, 2004 ) Examiner: TUAN N NGUYEN  
For: WRITING INSTRUMENT ) Appeal No.: \_\_\_\_\_  
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**REPLY BRIEF**

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**REPLY BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Reply Brief is filed in response to the Examiner's Answer issued August 3, 2010.

In response to Appellant's arguments traversing the Examiner's assertion that Otsuka teaches a capillary conduit 28 corresponding to the ink guiding feed recited in claims 21 and 59, the Examiner indicates that the ink guiding feed 24 of Otsuka is not made of capillary material, but it has a structure that causes capillary action. Moreover, the Examiner indicates that the pen tip 24a does include a capillary material since it has capillary force.

In Otsuka, the material of writing nib 24, i.e., a thermoplastic synthetic resin, is not porous and it therefore is not a capillary material. However, inner capillary conduits which are capillary tubes having capillary force are formed throughout the pen tip (Fig. 3). These capillary conduits communicate from the front end 24a to the rear end 24b of the pen tip (column 2, lines 64 to 68) and guide ink from the rear end 24b to the front end 24a by capillary force. The Examiner alleges that ink guiding feed 24 is not made of a capillary material, but has a capillary structure. That means the tip as a whole has capillary force. In short, the writing instrument disclosed in Otsuka includes:

- a sliver having capillary force
- a pen tip having capillary force as a whole, but no capillary material.

On the contrary, the pen tip of the claimed invention has capillary material and the ink guiding feed is a hollow flow passage which does not have capillary material or force. That is, the writing instrument in the claimed invention includes:

- a sliver having capillary force
- a hollow ink guiding feed having no inner capillary conduits or no capillary force
- a pen tip having capillary material.

The Examiner's interpretation that the pen tip 24a does not include capillary material, but that since it has capillary force it can nevertheless be interpreted to include capillary material, completely ignores a specific limitation of the claim -- a pen tip including a capillary material. Appellant's respectfully submit that Otsuka fails to suggest that "ink flows from the capillary material of said occlusion body by virtue of capillary force and ink flows into the capillary material of said pen tip by virtue of capillary force" as recited in Claim 21.

In response to Appellant's arguments traversing the Examiner's assertion that Otsuka in view of Takanashi and Madaus meets the limitations of claim 21 that the "ink guiding feed has visibility", the Examiner indicates that the proposed modification "would result in a writing instrument with a transparent pen barrel design which obviously would allow visibility to the inner parts of the writing instrument and the ink guiding feed is one of those inner parts."

Appellant submits that the nib 24 of Otsuka obtains a permanent tint from use with the ink in Otsuka and thus there would be no indication of the actual residual ink quantity. More specifically, the capillary conduit 28 is disposed within the permanently ink tinted nib 24 (see, Fig. 3), and thus the capillary conduit 28 is never clearly visible. Accordingly, the limitation of claim 21 that the "ink guiding feed has visibility" is not met.

Respectfully submitted,

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